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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1063

C. H. McLAIN, ET AL., *Petitioners*,
v.
E. E. LANCE, ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Fifth Circuit and Brief in Support Thereof

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals For the Fifth Circuit

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TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Statement of the Matter Involved

This is a libel in personam of a civil nature, and it is a libel for a declaratory judgment pursuant to the Federal Declaratory Judgment Act (28 U. S. CODE 400) in a case of actual controvery between Petitioners and Respondents. The Court's attention is directed to the first nine pages of Petitioners' libel for, perhaps, the best definitive statement of the issues herein involved (R. 4). Supplementing those statements,

however, Petitioners herein are regularly constituted and licensed pilots for Galveston Bar and the Houston Ship Channel, and Respondents herein are regularly licensed pilots for Galveston Bar, the Port of Galveston and the Port of Texas City. Petitioners are likewise licensed under Paragraph 214 of Title 46, U. S. CODE, holding pilot licenses for the waters involved and defined in Exhibit "A" of Petitioners' libel (R. 15). Respondents may likewise hold such Federal pilot licenses for the same waters. All of the Petitioners and all of the Respondents are presently commissioned in the United States Coast Guard and are under the regulation and control of the United States Coast Guard as to the *movement of vessels* and in all other respects save as to fees; and, by virtue of proper arrangements with the United States Coast Guard, the fees have been fixed for all Petitioners and Respondents on what is known as "refuge ships." The true issue involved here is the rights and liabilities as to such fees on "refuge ships" coming into the anchorage areas as shown in Exhibit "A" to Petitioners' libel (R. 15). The determination of this question will depend largely on a construction of Paragraphs 191, 191(a) and 191(c) of Title 50, U. S. CODE, and the regulations, orders and directions of the United States Coast Guard under such statute and the executive orders passed pursuant thereto. A decision of this case will likewise depend largely on the actual directions, other than officially recorded directions, given by the Commandant and other Executive officers of the Coast Guard in the movement of such vessels.

In the trial court Respondents duly filed their motion to dismiss the libel for want of jurisdiction (R. 16) with exhibits (R. 20), on the ground, among others, that the libel and the relief sought therein being for a declaratory judgment only, the action does not come within the admiralty and maritime jurisdiction, for the Federal Declaratory Judgment Act is not applicable to proceedings in admiralty.

Respondents duly requested the court below to place their motion to dismiss on the motion docket (R. 65). On July 30, 1944, the trial court rendered its opinion granting the Respondents' motion on the above stated grounds (R. 74), and on July 14, 1944, a decree of dismissal was entered (R. 78).

Petitioners filed their petition for appeal, which was allowed as prayed for by order of the court below on July 20, 1944 (R. 79). The appeal was duly perfected by proper notice of appeal (R. 86), the filing and approval of an appeal bond (R. 83), and the filing of Petitioners' Assignment of Errors (R. 82). The transcript of the record was duly and timely filed in the Circuit Court of Appeals for the Fifth Circuit on August 10, 1944. Thereafter, on the 20th day of December, 1944, after due and timely filing of written briefs and submission of the case on oral argument, the said Circuit Court of Appeals for the Fifth Circuit rendered its judgment affirming the decision of the trial court (R. 88). A petition for rehearing was denied on January 15, 1945 (R. 108).

Jurisdiction

This Court has jurisdiction of this case under Title 28, U. S. CODE, Sec. 347 (JUDICIAL CODE, Sec. 240), because:

(a) It involves the construction of Federal statutes (Sections 191, 191(a) and 191(c), Title 50, U. S. CODE) extremely important in aiding in the effective prosecution of the war, and because it involves a matter of general importance which it is in the public interest to have decided by the Court of last resort, to-wit, the power of the Federal Government in time of war, and acting under the above Federal statutes, to effectively control, direct and regulate the anchorage and movement of vessels, the safety of which is

of paramount importance to the welfare of the nation.

(b) It involves the proper construction of the Federal Declaratory Judgment Act (Sec. 400, Title 28, U. S. CODE) as to whether or not said Act is applicable to proceedings in admiralty, this being a matter of general importance which it is in the public interest to have decided by the Court of last resort.

(c) The Circuit Court of Appeals has decided an important question of local law in a way in conflict with applicable local decisions, to-wit, the Circuit Court of Appeals has held that the decision of the Texas Court of Civil Appeals in the case of HOUSTON PILOTS, ET AL., V. GOODWIN, ET AL., reported at 178 S.W. (2d) 308, has established the law of this case, and is therefore res judicata, whereas local decisions are to the contrary.

Questions Presented

1. Does the libel in this action state a maritime cause of action?

2. Is the Federal Declaratory Judgment Act applicable to proceedings in admiralty?

3. Are the rights of the parties governed by State statutes, to the exclusion of Federal statutes?

4. Have the rights of these parties been decided by the Texas Court of Civil Appeals decision in the case of HOUSTON PILOTS, ET AL., V. GOODWIN, ET AL., 178 S.W. (2d) 308, that being a decision on venue only?

Reasons for Granting the Writ

All of the questions above presented involve matters of general importance. They present to the Court for the first

time the question as to whether an action between pilots to determine rights to pilotage fees constitute a maritime cause of action. Also, they present to the Court for the first time the question as to whether an action which seeks the determination of the existence and the construction of an alleged contract between pilots relating to pilotage fees states a maritime cause of action. They likewise present to the Court for the first time the question as to the applicability of the Federal Declaratory Judgment Act to proceedings in admiralty.

In addition this question is presented: While in peace time the regulation of pilots generally is left to the several states, has the Federal Government, by Sections 191, 191(a) and 191(c) of Title 50, U. S. CODE, and the executive orders and regulations issued thereunder, exercised the power to regulate pilots, which admittedly it possesses?

Petitioners file herein a certified transcript of record as required by Rule 38(1), and attach hereto a brief in support of this petition.

WHEREFORE Petitioners pray that in the exercise of its discretion this Court may issue its Writ of Certiorari to review the decision herein of the Circuit Court of Appeals for the Fifth Circuit, and for such other orders as may be appropriate.

Respectfully submitted,

DOUGLAS W. MCGREGOR,
Counsel for Petitioners

Dated March 14, 1945